

# Third Study Commission Questionnaire 2020

## Costa Rica

### *Answers by Switzerland*

#### **A. Interpretation in criminal courts**

1. What criteria must be met for an interpreter to be appointed? Does this differ if it is for a party to the case, or a witness?

*The criteria is that a party to the proceedings does not understand the language of the proceedings or is unable to express him- or herself adequately. So, the criteria is the same for any participants on the procedure (accused, victim, witness). However, in minor or urgent cases, the director of proceedings may, if the person concerned consents, dispense with appointing an interpreter provided the director of proceedings and the clerk of court have an adequate command of the foreign language concerned.*

2. Is the interpretation limited to certain languages?

*Basically no. If possible, the interpretation from and to the mother tongue of the person should be granted but there is no right to that and in practice it's sometimes very difficult to find an approved interpreter for an uncommon language .*

3. Who appoints the interpreter?

*The interpreter is appointed by the director of proceedings, i.e. the prosecutor during the investigation and the head of the court for the main hearing.*

4. Are there standard requirements for the quality of the interpretation or qualifications of the interpreter?

*In Switzerland, the organization of the judiciary is in the competence of the cantons. Therefore, there is no national regulation on interpreters and each canton has his own regulations but the standard requirements are quite similar. Candidates have to follow an approval procedure and have to prove their professional skills and qualification as well as personal requirements. In many cantons, they have to pass a special exam. These regulations should grant a good quality of the interpretation. There are lists with*

*approved interpreters available for the prosecution and the judges.*

If so, how does the judge ensure compliance?

*By appointing only approved interpreters who passed successfully the approval procedure and the respective exams. Furthermore, if the judge commands the respective language himself, he can easily verify the quality of interpretation.*

If the judge does not command the language?

*In this case, the judge basically has to rely on the compliance of the approval procedure. However, there are circumstances which can raise doubts on the quality of the translation (for instance very short translation of long statement of the accused, victim, witness, or v.v. long translation of a very short statement). The judge should be aware of and react to such incidents.*

In any event, how does the judge ensure that the interpretation is accurate and meets good standards?

*see above.*

5. Are there legal obligations for court interpreters?

*Yes, the provisions on expert witnesses apply mutatis mutandis to interpreters (inter alia duty of confidentiality, sanctions in case of failing to fulfil their duties).*

6. For the main hearing of the case is the translation for the whole hearing or only part of the hearing? If it is only part, which parts, and why is the whole hearing not translated?

*No, there is no right to have all procedural acts and files translated in full; that applies also for the main hearing. Under the Swiss Criminal Procedure Code the accused shall be notified of at least the essential content of the most important procedural acts. In practice this includes information on the bill of indictment, the essential content of statements of other accused persons, of victims and witnesses, written or oral expert reports, the requests of the parties, the pleadings and the sentence. The reasons for the limitation of translation are likely the prolongation of the procedure and the cost.*

**B. The importance of good interpretation and good communication for the verdict?**

7. Assuming that the quality of interpretation could affect the outcome of a case:

7.1 Do you consider this applies more in certain types of cases than others and, if so, what types of cases?

*Yes, in cases where there is no (or not much) objective evidence and therefore the statements of the accused person, the victim and/or witnesses are very important.*

7.2 Is it a problem that can be remedied, or a problem that the judiciary must live with? And if yes, how do we secure that no one is wrongfully convicted?

*First of all, it has to be ensured that the approval procedures for interpreters are strongly observed and that they provide a good quality control management. Furthermore, the judge should be aware of the importance of a good interpretation especially in cases mentioned above (nr. 7.1) and has to intervene if there is any doubt on the quality of interpretation.*

8. Is there a risk that people who have difficulty explaining themselves, possibly due to low intelligence or poor education, suffer disadvantages at the court? If yes, what remedies exist?

*Yes, this is a risk which is difficult to handle. It is the duty of the judge to be aware of that risk and to deal consciously with it.*

9. Is intercultural communication a subject of training for judges or part of the instruction of juries?

*In Switzerland, there is no compulsory training for candidate judges. Therefore, it's up to the judges to be aware of the importance of cultural differences, take in account potential problems related to these differences and look for individual training in this field. Furthermore, interpreters may often have knowledge in intercultural communication and can contribute to*

*a better understanding. As for the juries it has to mentioned that there is no jury system in Switzerland.*

### **C. Nonverbal communication in the courtroom**

10. Can the body language of accused persons, victims or witnesses influence the outcome of a case?

*Yes, especially if it's about credibility and authenticity of a person or it's personality in a more general way.*

11. Is nonverbal communication a subject of training for judges or part of the instruction of juries?

*No, see also above, answer to question nr. 9.*